

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

13 Civ. 6326 (WHP)

PREVEZON HOLDINGS, INC., et  
al.,

Defendants.

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New York, N.Y.  
January 25, 2017  
10:10 a.m.

Before:

HON. WILLIAM H. PAULEY III,

District Judge

APPEARANCES

PREET BHARARA

United States Attorney for the  
Southern District of New York

PAUL M. MONTELEONI

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QUINN EMANUEL URQUHART & SULLIVAN LLP

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BY: KEVIN S. REED

ADAM M. ABENSOHN

RENITA SHARMA

1 (Case called)

2 MR. MONTELEONI: Good morning, your Honor, Paul  
3 Monteleoni for the government. With me at counsel table are my  
4 colleague, Cristine Phillips and, with the Court's permission,  
5 my extern from NYU, Sarah Higgins.

6 THE COURT: Very well. Good morning to you,  
7 Mr. Monteleoni.

8 MR. REED: Good morning, your Honor, Kevin Reed from  
9 Quinn Emanuel Urquhart & Sullivan here with my colleagues, Adam  
10 Abensohn and Renita Sharma.

11 THE COURT: Good morning to you, Mr. Reed, and your  
12 colleagues.

13 Back in April of last year this case was reassigned to  
14 me from Judge Griesa for trial and all purposes at a time when  
15 the government's appeal was pending in the Second Circuit. I  
16 entered an order fixing this conference as soon as the mandate  
17 came down from the Second Circuit. And I see that, like this  
18 Court, Quinn Emanuel is new to the case.

19 Let's begin by telling me essentially what the status  
20 of the proceedings are from the parties' perspective positions  
21 with a view to trying to fix a trial date in this case.

22 Mr. Monteleoni.

23 MR. MONTELEONI: Thank you, your Honor. This case  
24 seeks the civil forfeiture of property worth between 13 and \$14  
25 million and civil money laundering penalties based on the same

1 underlying conduct, which is allegations that the defendants, a  
2 set of real estate companies owning the property for which  
3 forfeiture is sought, laundered a portion of the proceeds of an  
4 extensive Russian fraud scheme principally into purchases of  
5 New York real estate, also real estate in Germany.

6 The case has been pending for a long time but with  
7 respect to the status of the proceedings a very small portion  
8 of that time has actually involved active discovery as there is  
9 an extensive period during which the parties had agreed to have  
10 discovery on hold pending a dispositive motion filed by the  
11 defendants and then pending prediscovery settlement  
12 discussions.

13 So discovery commenced in this case on June 15 of  
14 2015. Before then there had been two partial depositions that  
15 had been taken, each in sort of unusual procedural  
16 circumstances. But documents first were exchanged June 15 of  
17 2015 and the parties moved expeditiously to prepare this highly  
18 complex case for trial, scheduled ultimately in February. It  
19 was going to be scheduled in early January, but the  
20 disqualification proceedings, as a result of the prior  
21 counsel's indication of their intention to accuse their former  
22 client of a crime, came up very late in the proceedings.

23 So between the district court's stay and then the  
24 Second Circuit's stay, the case has really been actively  
25 litigated for between six and seven months. During that time

1 the government made a voluminous discovery production,  
2 including a number of foreign language documents and voluminous  
3 bank records, a number of fact depositions were taken and  
4 expert depositions were taken on multiple issues.

5 THE COURT: When you use the adjective voluminous, can  
6 you give me some idea of the magnitude?

7 MR. MONTELEONI: That's fair. It feels voluminous to  
8 us, though I'm sure courts in this district deal with somewhat  
9 larger productions. The government ultimately produced about  
10 221,000 pages of documents and the defendants produced about 20  
11 to 30,000 pages of documents.

12 THE COURT: And with respect to those documents that  
13 may be in foreign languages, have they been translated?

14 MR. MONTELEONI: Not in their entirety. The parties  
15 have been preparing the translations of the portions that they  
16 wish to introduce in trial. There are large volumes of foreign  
17 language documents of which portions are relevant but not the  
18 entirety. In particular there is about a 32,000-page Russian  
19 court file of which contains a number of relevant portions and  
20 those have largely been translated. There may be a few  
21 additional translations that we would wish to make. But  
22 translating 32,000 pages or so of Russian documents is an  
23 extraordinary expense. And so the translations have largely  
24 been done by this point. But they were going at a track along  
25 with basically everything else sort of simultaneously. In

1 order to compress all of this into the allotted time, facts  
2 discovery bled over into the expert discovery period and indeed  
3 a partial summary judgment motion was filed and briefed while  
4 depositions both fact and expert depositions were taking place.

5 THE COURT: Let me interrupt you for just a moment.  
6 How many depositions have you taken in the case?

7 MR. MONTELEONI: I don't have the exact number at my  
8 fingertips. I believe it's around 13 to 14 fact witnesses and  
9 the government is putting forth three experts and the  
10 defendants put forth three experts as well, I believe.

11 THE COURT: And have all of the experts been deposed?

12 MR. MONTELEONI: Well, yes, with the exception -- with  
13 a complication. In the summary judgment briefing the  
14 defendants first advanced a theory that two powers of attorney  
15 in Russian showed that their former prior defense counsel's  
16 former client committed the fraud and thus they argued that it  
17 wasn't a specified unlawful activity. As a result of that  
18 theory that they advanced we had a document examiner examine  
19 those signatures and very shortly before trial came forward  
20 with an expert report concluding that these signatures that  
21 were relied on by prior defense counsel in his opinion were  
22 likely forgeries. Defense counsel at the time moved to  
23 preclude that due to the lateness of the disclosure. We think  
24 that there is no basis to preclude that and we have certainly  
25 no objection to that expert being deposed on the opinions.

1 THE COURT: Aside from that expert, what are the other  
2 areas in which experts who have been designated by either the  
3 government or the defendant? What areas are they proposing to  
4 offer opinions in?

5 MR. MONTELEONI: Absolutely, your Honor. So the  
6 government is offering the opinion of an expert on Russian  
7 organized crime, an expert on asset tracing, and an expert on  
8 money laundering. The defendants offered an expert on asset  
9 tracing, an expert on money laundering, and an expert  
10 putatively on real estate practices who we believe offered a  
11 number of opinions on money laundering that will be the subject  
12 of a *Daubert* motion.

13 This is a civil forfeiture case with respect to the  
14 specific assets. However, the Russian treasury fraud and the  
15 money laundering network that laundered those funds are the  
16 subject of a criminal investigation that's also been  
17 proceeding. There have been motions in which the defendants  
18 objected to this. We believe it's authorized. That's the  
19 subject of motions. But the criminal investigation continued  
20 during the stay. So we actually obtained a number of  
21 additional documents from other countries. We received  
22 additional documents from other countries in the ongoing  
23 investigation into the money laundering network. Pursuant to  
24 our continuing disclosure obligations we plan to produce those  
25 to the defendants in a few days. We expect that some of them

1 will be relevant to this case. Some of them may not, but we  
2 will be producing them in an abundance of caution. But we also  
3 expect that our tracing expert has additional opinions that he  
4 has been able to form by examining some of the bank records.

5 THE COURT: That have been received in connection with  
6 the ongoing criminal investigation?

7 MR. MONTELEONI: Yes.

8 THE COURT: Approximately what's the volume of the  
9 material that you are about to produce from that continuing  
10 investigation?

11 MR. MONTELEONI: It's hard to estimate because it  
12 hasn't been numbered and some of these bank records go on. We  
13 think it's in the tens of thousands of pages. However, we  
14 think that, you know, the expert's supplemental report, which  
15 we expect to produce in a few weeks, will only be relying on  
16 certain of those pages that might help the defense counsel in  
17 prioritizing which pages -- what to focus on first or most.

18 Those were the principal areas that were outstanding  
19 at the time of the stay, but there were a few other areas that  
20 were outstanding because of the sort of simultaneous nature of  
21 the proceedings. There were several depositions which the  
22 parties had agreed to that were scheduled before the  
23 disqualification proceedings put a stop to that. We have  
24 talked to defendants about both some depositions that we wanted  
25 to take and some depositions that their prior counsel had

1 wanted to take, and they have not yet formulated a position on  
2 those loose ends. But there were these loose ends with respect  
3 to those depositions.

4 They also, during the stay of proceedings, asked the  
5 Second Circuit to modify the stay to allow them to take an  
6 additional deposition of an additional witness. That was  
7 denied, but we may be able to engage with them if they still  
8 want to take that deposition as well.

9 Finally, if this can be worked into a schedule that  
10 works for both sides, the ongoing criminal investigation also  
11 included the interviews by the Latvian police at our request of  
12 several Latvians who were nominal directors or otherwise  
13 affiliated with some of the companies that we allege to be  
14 shell companies, and we think that one of those in particular  
15 would be appropriate to take a remote deposition of, either by  
16 video conference to Latvia or by traveling to Latvia. That  
17 witness has expressed a willingness to testify in Latvia, but  
18 not in the United States.

19 THE COURT: Is that witness a director or a law  
20 enforcement individual in Latvia?

21 MR. MONTELEONI: Sorry. A director. One of the  
22 nominal directors whose signature or reputedly his signature  
23 appears on the foundation documents of a number of companies  
24 that we allege to be shell companies and they are shell  
25 companies are relevant to the tracings of the assets from them.

1 So we believe that his testimony is material to that.

2 There were also some documents outstanding from the  
3 defendants' production that we did not raise with the  
4 defendants prior to this stay as a result of how fast the  
5 proceedings were going. But in looking things over once the  
6 stay went into place, we discovered that they actually hadn't  
7 produced any documents at all from two corporate entities who  
8 are part owners of the defendant companies and thus are covered  
9 by our document requests. And the significance of at least one  
10 of those companies, actually it turned out through depositions  
11 and through some of their other discovery productions, turns  
12 out to be quite significant for reasons I can explain to you  
13 factually if you want to hear them now.

14 THE COURT: What companies are they?

15 MR. MONTELEONI: Sure. The two companies are called  
16 IKR and Martash Holdings, and they are both companies that are  
17 essentially related to the Prevezon network. The Martash  
18 Holdings is a small part owner of Prevezon Holdings, the  
19 umbrella company for the LLCs, and then IKR, I believe, is a  
20 part owner of several of the LLCs.

21 Now, Martash Holdings in particular, they are relevant  
22 not just because they are a part owner like IKR is, but also  
23 some of the paperwork that the defendants submitted to their  
24 bank to justify the transactions that we contend are money  
25 laundering was loan paperwork that was, we believe, false, and

1 these false loans were then transferred off the books of  
2 Prevezon, which is a company in Cyprus required to keep audited  
3 financial statements. They were transferred to Martash  
4 Holdings, which is a British Virgin Islands company, not  
5 required to keep audited financial statements.

6 We believe that the effect of that transfer was to  
7 prevent any auditors from learning that these supposed loans  
8 would never be paid back. So we believe that Martash Holdings  
9 documents or lack of documents are actually quite relevant.  
10 They are not things that we were able to prioritize during the  
11 period before trial.

12 THE COURT: There were any number of motions in limine  
13 that had been made just as the trial was approaching and all of  
14 those motions were terminated by reason of the application of  
15 the Court of Appeals. Tell me just very briefly whether it's  
16 the government's intention -- and I'll ask the same of the  
17 defendants -- to file similar motions or updated motions prior  
18 to trial.

19 MR. MONTELEONI: Yes, your Honor. I'll speak to that,  
20 but I also, there are several motion-related issues beyond the  
21 motions in limine that are also outstanding.

22 THE COURT: Start where you think is most appropriate.

23 MR. MONTELEONI: The operative complaint is the second  
24 amended complaint which was amended following the judge's  
25 August 2015 ruling denying a motion to dismiss. It was amended

1 in the fall alongside a number of other things. That complaint  
2 hasn't yet been answered. There is a pending motion to  
3 partially dismiss it as to certain specified unlawful  
4 activities that are alleged to be money laundering predicates.  
5 That wasn't ruled on. As a result, no verified answer has been  
6 given to the final complaint.

7 There was also an issue of, one particular theory of  
8 specified unlawful activity was arguably not set forth with  
9 specificity in the second amended complaint because some facts  
10 were developed while the motion to file a second amended  
11 complaint was being briefed. That theory was then presented to  
12 the court in the partial summary judgment briefing so it not  
13 only has been the subject of briefing, but of evidentiary  
14 production by both sides.

15 So we believe that this particular theory of a  
16 particular way in which the underlying Russian treasury fraud  
17 was a fraud on a foreign bank, we think that that theory is  
18 subject to proof at trial under Rule 15(b)(1), as the substance  
19 has already been before the parties. We have asked the  
20 defendants whether they agree. If they don't, we would seek to  
21 either secure a pretrial ruling from the Court that it is  
22 subject to proof under 15(b)(1) or simply file a third amended  
23 complaint that sets forth that final theory. But one way or  
24 another, whatever happens with that, there is still a pending  
25 motion to partially dismiss and a pending answer. Then I could

1 speak to the motions in limine unless you have questions about  
2 that.

3 THE COURT: Let me interrupt your presentation for a  
4 moment to ask Mr. Reed whether there is any reason, if there is  
5 a dispute about whether a particular theory is covered by the  
6 second amended complaint, why not simply let the government  
7 file a third amended complaint.

8 MR. REED: Your Honor, that gets to sort of a theme  
9 that we wanted to explore this morning.

10 From our perspective, from our client's perspective, a  
11 little more accurately, this case has been pending for far too  
12 long. It was on the verge of trial, literally a week or so  
13 away, when it got stayed.

14 What we have heard from the government, and we still  
15 have some speaking to do with them because we are only at the  
16 beginning of conferring, is that in a number of areas they want  
17 to sort of restart or redo things in a way that we think will  
18 unfairly delay the case that ought to really be tried as soon  
19 as possible.

20 With respect to the specific issue you raised, the  
21 third amended complaint, there is a motion for summary judgment  
22 pending in which they have put forth this new theory. That was  
23 denied, to be more accurate. They now want to incorporate that  
24 theory into a formal pleading.

25 Our view is, it's far too late to amend the complaint

1 in a case that was ready to go to trial a week before it was  
2 stayed. It may be that they can get it in under Rule 15(b).  
3 That's something we are reserving and we told them we will give  
4 them a position as soon as we are able. If the law says they  
5 can do it, they can do it. But from our perspective, if they  
6 are not permitted to proceed on it under Rule 15, they  
7 shouldn't be allowed to amend the complaint a week before the  
8 trial should start.

9 It's true that the case has been stayed for a year.  
10 But, again, from our client's perspective, that's time that  
11 didn't really elapse because the delay wasn't their fault.  
12 They didn't know that their counsel had a putative conflict.  
13 We obviously weren't engaged during that, so we didn't have the  
14 benefit of that here. As we see it, things should pick up  
15 largely where they were at the time this case was stayed.

16 THE COURT: Let me ask you this. When are you going  
17 to be ready to go to trial?

18 MR. REED: Our hope is to be ready to go to trial some  
19 time either late May or June. The way we envision it unfolding  
20 would be, there are several outstanding motions that the  
21 government has alluded to. We would like time to basically  
22 repackage those to the Court to decide what we want to advance,  
23 what we won't, streamline it, make sure it's presented to you  
24 in a way that gives you the necessary background to understand  
25 it. We would like to file dispositive motions, including one

1 that's pending with respect to the theories --

2 THE COURT: There are no motions that are pending.  
3 All the motions were terminated when the case went up to the  
4 Second Circuit. And I am going to require the parties to file  
5 any motions they want to make so that I've got a clear record  
6 and supply me with paper copies.

7 MR. REED: Sure. That's precisely our concept. What  
8 we would like to do is file a set of dispositive motions in the  
9 early March time frame, file motions in limine shortly  
10 thereafter and proceed to trial hopefully in late May or at  
11 some point in June.

12 The government has raised a number of issues and if  
13 I'm going beyond what you want addressed at this point --

14 THE COURT: That's all right. Go ahead.

15 MR. REED: The government has raised a number of  
16 issues with respect to what they perceive as outstanding items.  
17 They identified these to us a couple of days ago, helpfully, as  
18 we began to talk to each other in preparation for this  
19 conference, and we told them we will look at them and get back  
20 to them our position.

21 As an overall matter, subject to further discussions  
22 with the government on some of these items, as an overall  
23 matter, the view that I think we are going to take is, to the  
24 extent there was discovery that had been ordered by the Court  
25 that hadn't been done, let's get that done. To the extent it

1 goes beyond that, we think it's too late. We think this case  
2 should not be further delayed by discovery that they now want  
3 to do, taking advantage of the stay.

4 For example, they speak about 10,000 or so new  
5 documents that they discovered through a criminal investigation  
6 during the pendency of the stay which they will presumably  
7 disclose to us and they want us to analyze and they want to put  
8 in an expert report in a couple of weeks and we will have to  
9 put in an expert report.

10 From our perspective, none of that should be  
11 admissible. They wouldn't have had it if the case had gone to  
12 trial when it was supposed to. There is no reason to allow  
13 that.

14 Similarly, on the other items, to the extent the  
15 government had authorization to do it when the case was stayed,  
16 we will work that out. To the extent they didn't, I think we  
17 are likely to say, let's go to trial because it's not part of  
18 the record and it shouldn't be part of the record.

19 We will confer with them, as I said, because there may  
20 be some items that are easy enough to knock off that it doesn't  
21 make sense to fight over, and we are certainly not looking to  
22 delay the litigation with needless disputes. I think we need  
23 to talk to them further and see what precisely they want to do.

24 But our position is going to be, ultimately, we want  
25 to get this to trial as soon as we can because our client's

business has been essentially shut down for a year. They are laboring under the taint of allegations that they have been involved or somehow tied with a massive fraud on the Russian treasury, and their interests are in getting this done as soon as possible. That's what we were brought on to do. We have been drinking from the fire hose as fast as we can and are committed to being ready as soon as we can, but we don't want to be slowed down by redoing and restarting and reopening discovery that we think should have been closed at the time this case was ready to go to trial.

THE COURT: Prior to the stay, had the parties exchanged witness lists for trial?

MR. MONTELEONI: Yes, your Honor.

THE COURT: And have the witnesses who the parties are going to call at trial been deposed?

MR. MONTELEONI: Most, but not all. Some of these outstanding issues were a witness that was on the defendants' disclosures that they had agreed to a deposition that then just didn't happen in time.

THE COURT: Was that the witness that the application was made to the Second Circuit?

MR. MONTELEONI: No. That's a different person all together.

THE COURT: Thank you, Mr. Reed.

Why don't you continue, Mr. Monteleoni, with your

1 report.

2 MR. MONTELEONI: Yes, your Honor. Thank you.

3 With respect to motions in limine, we do intend to  
4 file new motions in limine. We think that there are several  
5 areas in which trial can be made much more orderly if they are  
6 thoroughly briefed and teed up through motions in limine.

7 And just to preview, one of those areas is in the  
8 matter of asset tracing. The money laundering network was  
9 extremely complex and in these circumstances there are a number  
10 of legal rules that govern when the government can trace assets  
11 and deem assets from commingled companies or money laundering  
12 companies to continue in further steps in the chain.

13 One motion in limine will I think will be on  
14 instructing the jury and in barring contrary evidence that  
15 contradicts these asset tracing principles. In fact,  
16 defendants' tracing expert testified that he thought that these  
17 principles weren't appropriate, and we think it's important for  
18 a ruling where the actual appropriate principles are determined  
19 by the Court in advance and no contrary evidence is going to be  
20 put before the jury. That's one area that I think will impose  
21 some more order on the tracing portions of it.

22 Another area is, this case presents somewhat more  
23 complex authentication issues for some documents than a number  
24 of cases do. A large amount of the subject matter of the case,  
25 the initial fraud, took place in the territory of the Russian

1 Federation. The Russian Federation has not granted our legal  
2 assistance request with respect to this case, which is,  
3 overall, covers a rather politically sensitive subject matter.

4 And there were also some witness safety concerns that  
5 mean that some of the evidence will come in the form of  
6 documentary evidence that we believe can be authenticated  
7 through methods such as Rule 901(b)(3) or (b)(4) involving a  
8 careful comparison to authenticated documents and circumstances  
9 of that nature.

10 For things like that, since it's not as easy as just  
11 calling the bank custodian to come in and talk about the  
12 regular course of business, we think that that would also make  
13 sense to be teed up through a rather lengthy motion in limine,  
14 and then there are other sort of *Daubert* expert issues with  
15 respect to some of the opinions that defendants previously  
16 indicated they wanted to offer. We do envision a substantial  
17 amount of motions in limine, and I think that this case,  
18 perhaps more than the usual case, would benefit from thoughtful  
19 presentation by the parties of them.

20 THE COURT: When is the government prepared to try the  
21 case?

22 MR. MONTELEONI: If the defendants are ready to go to  
23 trial in May, we can work with that. I think that would  
24 require a very fast turnaround on a lot of these discovery  
25 issues and I think that it could -- the problem that I foresee

1 is, if the discovery issues then need to be litigated, I think  
2 if the documents were just going to be exchanged and the  
3 witnesses were going to be deposed, I would think that that  
4 could all be done in time.

5 I think that if there is going to have to be motions  
6 for protective orders and the like to get rulings on whether  
7 this discovery needs to come out, I think that might be  
8 difficult to get it done in May or early June, but we do want  
9 to proceed expeditiously as well. We think that these things  
10 need to be addressed so we proceed in an expeditious and  
11 orderly way.

12 THE COURT: How long does the government anticipate it  
13 will take to try the case?

14 MR. MONTELEONI: Our previous estimate was three to  
15 four weeks for the government's case in chief. That was based  
16 in part on an understanding of the previous district court's  
17 length of trial day and trial week and the like. I think that  
18 it would be probably on the lower end. We have tried to make a  
19 conservative estimate.

20 THE COURT: Let me interrupt. On that score let me  
21 tell both sides that my customary practice is to, with a jury  
22 trial, bring the jury out at 10:00 and to try the case until  
23 5:00 four days a week, Monday through Thursday, and to take a  
24 one-hour luncheon recess from 1 to 2 and a very short  
25 midmorning and very short midafternoon break. And I also

1 insist that counsel be present as early as necessary on any  
2 given trial day so that we can take up any issues that they  
3 want to raise with the Court outside of the hearing of the jury  
4 so that at 10:00 we bring the jury out and they listen to  
5 testimony and examine exhibits. I know, from looking at some  
6 transcript of these earlier proceedings, that Judge Griesa's  
7 trial day was shorter than that.

8 And so against that backdrop, what is your sense of  
9 the government's case? I might say one other thing on this  
10 score, that my practice at trial is to have a witness called  
11 only once. And so to the extent that both parties intend to  
12 call the same witness, if the government calls the witness, the  
13 defendants' examination of that or cross-examination of that  
14 witness is not limited to the scope of the government's direct.  
15 It's only after both sides have had a full and wide-open  
16 opportunity to inquire of each witness that I start to limit  
17 the scope of redirect and recross. And so that should be  
18 hopefully a time saver for the parties as opposed to the  
19 artificial constraints of having each side call some of the  
20 same witnesses.

21 MR. MONTELEONI: Yes, your Honor. May I have a moment  
22 to consult with cocounsel?

23 THE COURT: Sure.

24 MR. MONTELEONI: There is going to be some uncertainty  
25 because there are questions about how many facts we can

1 stipulate to with defendants. There were some discussions of  
2 that ongoing that didn't make it in. And also some of the  
3 motions in limine, how much of it can be disposed of in advance  
4 of trial. We think two to three weeks for the government's  
5 case in chief with a fairly high variance of uncertainty.

6 THE COURT: Mr. Reed, what's the defendants' view of  
7 how long it will take to try the case?

8 MR. REED: Your Honor, I have to caveat it by telling  
9 you that we are still really getting our hands around what's  
10 involved. My sense would be that we would be looking at a  
11 two-week presentation from the defendants, but it's a pretty  
12 soft estimate at this point.

13 THE COURT: Incidentally, how many of the witnesses do  
14 the parties anticipate will be testifying through interpreters?

15 MR. MONTELEONI: We believe that perhaps three  
16 witnesses would be testifying live through interpreters. There  
17 are a number of recorded depositions, some of which involved  
18 interpreters, that would be presented. That would increase the  
19 number by another three or four, I think.

20 THE COURT: Go ahead, Mr. Reed.

21 MR. REED: I think the majority of ours, other than  
22 experts, would be testifying through an interpreter, your  
23 Honor.

24 THE COURT: It seems to me that at the outset we need  
25 to promptly tee up any dispositive motion either addressed to

1 some portion of the second amended complaint or for partial  
2 summary judgment. If it's largely an issue of simply refiling  
3 motions with a quick update on the law, that shouldn't take  
4 much time to do at all, it seems to me.

5 What are the parties' views on that?

6 MR. MONTELEONI: We don't intend to revisit the  
7 district court's denial of our partial summary judgment motion,  
8 so other than motions in limine, we have no motions.

9 THE COURT: What about you, Mr. Reed?

10 MR. REED: I think we need approximately four to five  
11 weeks. What we would like to do is take the motion that was  
12 filed with respect to the second amended complaint, kind of  
13 redo it and update it. And then, in addition, there is a  
14 motion that has not yet been filed, even in a now defunct form,  
15 relating to the tracing of assets. That is a complicated issue  
16 that we need a little time to get our hands around.

17 THE COURT: What would be the contours of that motion  
18 with respect to tracing of assets? Is that an in limine motion  
19 involving one of the government's experts, or what?

20 MR. REED: I think, your Honor, it may dovetail with  
21 the in limine motion. I think the theory of the motion, and we  
22 are still getting our hands around it, is that under applicable  
23 law they simply can't trace the assets to our clients in a way  
24 that they need to to establish liability. It would be in the  
25 nature of summary judgment. It may be that as we make it, they

will clarify it and sort of invite some of the issues that the government is raising in terms of what the applicable rules and law is with respect to tracing. It may be that that incorporates the motion in limine that they are intending to make as an opposition to our motion.

THE COURT: Sounds a little nebulous at the moment, but let me fix a schedule and fix a schedule with a trial date. Why don't you file any motion addressed to the second amended complaint or for partial summary judgment by February 28.

Mr. Monteleoni, how much time would the government like to oppose it?

MR. MONTELEONI: Three weeks, your Honor.

THE COURT: March 21 and any reply by March 28. I am going to set those motions down for oral argument on April 5. And what I'd like to do is see if we can't set this case down for jury selection and trial beginning on May 15 with the hope that we might complete the case before the Second Circuit judicial conference which begins on June 7. If not, we will press on. I would like to complete this case before we get into the summer.

I would also like to fix a schedule now for motions in limine. I would like to see a joint pretrial order. And I think I will get you to give me a joint pretrial order, recognizing that it can be subject to some modifications, but get me a joint pretrial order by March 10 so that I can start

1 to wrap my head around this case. And then I would suggest  
2 that the parties file any in limine motions by March 23,  
3 oppositions by April 6, replies, because of the holidays, by  
4 April 18, and I can set all of those motions down for an oral  
5 argument on May 3. We will make it May 3 at 11:00.

6 Obviously I agree with Judge Griesa's observation that  
7 sometimes it's difficult to resolve motions in limine without  
8 the context of a trial, but I'll do my best to resolve as many  
9 of those issues as I can before the parties have to go into  
10 jury selection and trial.

11 MR. REED: Your Honor, may I --

12 THE COURT: I'm reminded that for oral argument on the  
13 motions for partial summary judgment and addressed to the  
14 second amended complaint, I set it for April 5. Let's set it  
15 for 10:30 on April 5 for oral argument.

16 MR. REED: Your Honor, with respect to the motions in  
17 limine schedule, may I ask for just a small modification, which  
18 would be rather than having replies due on the 18th of April,  
19 can we do it on the 21st, at the end of that week?

20 THE COURT: Yes.

21 MR. REED: Thank you.

22 THE COURT: Now we have teed up in limine motions, the  
23 dispositive motions. I would like the parties also then to  
24 submit any proposed voir dire that they think is unique to this  
25 case to me together with a joint request to charge. Why don't

1 you plan to submit that by May 1 and then we can select a jury  
2 on May 15. I'll undoubtedly have a final pretrial conference  
3 with you right before May 15 to take up any loose ends.

4 Is this a schedule that is acceptable to the parties?  
5 If you're troubled about the jury instructions, I'll move it to  
6 May 9. I think that might be better. All the dust will have  
7 cleared by then.

8 MR. MONTELEONI: The government can work with that,  
9 your Honor. But I think that it would be helpful to set some  
10 type of deadlines that would allow the resolution of all of the  
11 outstanding discovery expert, etc. matters because I think my  
12 concern is that if they require relief from the Court it's  
13 going to be very hard to get all this done certainly by the  
14 joint pretrial order date of March 10. So I don't know what  
15 you're envisioning.

16 THE COURT: Get me the joint pretrial order by April  
17 7. The only reason I had suggested a much earlier date is that  
18 that then makes it clear to the parties what they may want to  
19 be moving in limine about. But if there is a concern about  
20 that --

21 MR. MONTELEONI: May I consult with cocounsel?

22 THE COURT: Sure.

23 MR. MONTELEONI: We think that we could work with that  
24 for the pretrial order.

25 Could we also request that a deadline be set for

1 discovery-related motions. Because I think our concern is that  
2 defense counsel is getting up to speed on these various loose  
3 ends that we believe are there and we want to make sure that we  
4 can get this teed up in time that they could be resolved. So  
5 we would propose February 10 would be the filing date for those  
6 and then some reasonable response schedule.

7 THE COURT: Well, let's do this. Mr. Reed, do you  
8 think you would be in a position in a little more than two  
9 weeks from now to advise the Court by letter about any  
10 additional discovery that the defendant believes is necessary  
11 in order to proceed to trial?

12 MR. REED: I believe we would, your Honor. I think  
13 the issue from our perspective is more likely to be precluding  
14 discovery that the government --

15 THE COURT: Here is how we will handle it then. By  
16 February 10 each side will submit a letter to me telling me  
17 what discovery they believe they need in order to complete  
18 their preparation for trial and why it wasn't previously  
19 completed. And after I get those letters I will schedule a  
20 conference for the following week in April to discuss it and  
21 resolve it.

22 MR. MONTELEONI: Did you say a conference for the  
23 following week in April?

24 THE COURT: In February. Excuse me. Submit letters  
25 to me on February 10 with respect to your respective positions

1 and then you can counter each other's letters or explain to me  
2 why the other side shouldn't be able to take whatever discovery  
3 they are requesting by February 15, and we will have a  
4 conference in the matter on February 17.

5 MR. MONTELEONI: Thank you, your Honor.

6 THE COURT: I'll set it down for 12:00 on the 17th of  
7 February. The Court and the parties will know after that time  
8 what discovery the Court is going to permit.

9 When is the government going to produce again to the  
10 defendants the documents that they have obtained?

11 MR. MONTELEONI: Within a week.

12 THE COURT: I am going to include that in the  
13 scheduling order that I'll enter, by no later than February 1  
14 the government will produce the additional documents for the  
15 defendants' consideration.

16 MR. MONTELEONI: Thank you, your Honor.

17 THE COURT: When you do that, you already know which  
18 documents among those your expert intends to refer to. You  
19 should set that forth in a letter to counsel with the document  
20 production so their focus can be directed on it and it will  
21 sharpen the arguments with respect to the need for discovery.

22 MR. MONTELEONI: Thank you, your Honor. We will do  
23 that.

24 THE COURT: Is there anything further that we can  
25 accomplish today?

1 MR. MONTELEONI: Nothing from the government, your  
2 Honor. Thank you.

3 MR. REED: No thank you, your Honor. We appreciate  
4 your time and consideration.

5 THE COURT: One last question. During the pendency of  
6 this case had any references been made to Magistrate Judge  
7 Peck?

8 MR. MONTELEONI: No, your Honor.

9 THE COURT: The parties should understand that  
10 generally I tend to supervise any discovery disputes in my  
11 cases unless I'm overwhelmed by something here, in which case I  
12 wouldn't hesitate to refer it to Judge Peck, who is very  
13 competent and very efficient.

14 MR. MONTELEONI: Your Honor, with apologies, there is  
15 one thing that I neglected. Can we say that any issues  
16 regarding the Rule 15(b)(1) or third amended complaint issue be  
17 included in the February 10 letters of outstanding discovery  
18 matters?

19 THE COURT: Sure.

20 Thank you very much for coming in. I'm available. So  
21 if there is any issue that arises, don't wait to bring it to my  
22 attention. Send me a joint letter consistent with my  
23 individual practices, and we will take it up right away.

24 Thank you all.

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